

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN HEARINGS PANEL**

IN THE MATTER of the Resource
Management Act 1991
and the Canterbury
Earthquake
(Christchurch
Replacement District
Plan) Order 2014

AND

IN THE MATTER of the Natural Hazards
Proposal of the
proposed Christchurch
Replacement District
Plan

**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF CHRISTCHURCH CITY
COUNCIL AND THE CROWN REGARDING PREPARATIONS FOR HEARING OF
THE NATURAL HAZARDS PROPOSAL (PROPOSAL 5)**

 **Simpson Grierson**
Barristers & Solicitors

Simpson Grierson
J G A Winchester / S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. The Council has been advised by the Independent Secretariat that it has started making arrangements for a hearing on the Natural Hazards Proposal (**Proposal**), and that it is possible that a hearing could be set down in February 2015, with a pre hearing meeting before Christmas.
2. With the Proposal being a matter of priority and listed as a "secondary priority matter" in the Terms of Reference, the Council and the Crown considers there would be value in convening a pre hearing meeting prior to Christmas.
3. For a number of reasons, it is however suggested that it may be beneficial for caucusing on three technical areas and by planning experts, followed by mediations on targeted issues, be added into any timetable before evidence exchange. Practically this would mean that the hearing on the chapter would need to be deferred by a relatively short period, perhaps to March 2015. This memorandum sets out the reasons why this is considered to be a fair and efficient approach for both the Hearings Panel and relevant parties, and is likely to assist in achieving an appropriate outcome for all parties who have sought to be involved in the hearing on the Proposal.
4. While the Proposal is a priority matter, it is also contentious and is likely to have a significant influence on the Hearing Panel's approach to subsequent proposals including Stage 2 proposals. As such, some additional time taken by way of pre-hearing processes may well ultimately save time throughout the remainder of the Replacement District Plan process.
5. By way of background, the Proposal is based on complex technical modelling and inputs. The Council has undertaken a review of the submissions received on the chapter, and has concluded that a large number of the submissions focus on policy issues with limited apparent understanding of the technical modelling that underpins the policy approach adopted by Council. This is understandable given the level of geotechnical and scientific background research undertaken to inform the subsequent analysis and modelling of natural hazard risks. That

underlying technical modelling is however also subject to challenge through submissions.

6. Given the challenges to both policy and science, the Council and the Crown submit that the most effective approach that could be adopted for this Proposal in terms of pre-hearing processes and to seek to narrow the issues, is for relevant experts to enter into technical caucusing on the modelling approach and methodology, and for planners to enter into caucusing on policy responses. If for example the Council's modelling is largely accepted or the areas of difference refined, it follows that the policy response is likely to be able to be more efficiently discussed and/or mediated.
7. It is respectfully submitted that such a process would ideally lead to a refinement of the issues put before the Hearings Panel and therefore a more focused hearing with the likelihood of a better outcome in terms of Natural Hazards land use provisions to lead the recovery and rebuild of Christchurch. The Council and the Crown submit that there would be significant benefits in setting aside time in January and perhaps two to three weeks in February for this process to occur prior to a sequential evidence exchange. It is submitted that this approach would be preferable compared to the potential for technical, but possibly unsubstantiated positions, being put to the Hearings Panel for determination.
8. It is also submitted that the process would allow sufficient time for experts to consider what, if any, influence the foreshadowed changes to the natural hazards provisions of the Canterbury Regional Policy Statement¹ will have, and what response is considered appropriate in light of those changes.
9. We note for completeness that concerns have already been raised with the Council by submitters, who seek to enter into dialogue about what the Council is trying to achieve with the Natural Hazards provisions and about the Council's initial reaction to the issues and concerns raised in submissions, prior to receiving technical evidence.

¹ As outlined in the Memorandum of Counsel for the Canterbury Regional Council dated 28 November 2014

Proposed series of technical witness caucusing and mediations

10. The Council and Crown have identified that the following technical areas, that are addressed in the Natural Hazards Proposal in Stage 1, would benefit from being subject to expert witness caucusing:
 - 10.1 **Flooding** - flood modelling, for example assumptions, extent, numbers affected, mitigation (ie floor levels);
 - 10.2 **Slope Instability** – on issues such as risk modelling, seismicity and Annual Individual Fatality Risk (**AIFR**) concepts for rock fall, cliff collapse and mass movement (this caucusing would need to involve expert witnesses with geotechnical expertise on the application of the modelling and hazard mitigation issues); and
 - 10.3 **Liquefaction** – geotechnical expertise.
11. The relevant definitions for each of these technical areas would fall within the appropriate expert witness caucusing.
12. As noted in paragraph 6, caucusing by **planners** to consider any changes to the policy approach would also be of value.
13. There is value in planners being invited to the technical caucusing (principally as observers) to gain a clearer understanding of the technical matters, including any limitations on the science. There is corresponding value in inviting the technical experts to the planners caucusing, and to respond to questions, etc. This 'overlap' opportunity should be built into the process.
14. The following groups of submitters have been identified as having specific interests:
 - 14.1 Port Hills Property Owners Group;
 - 14.2 Lyttelton Property Owners Group;

- 14.3 The Crown, on issues including risk, multiple hazard approach, land repair and flood modelling responses;
 - 14.4 Submissions from insurance companies;
 - 14.5 Port of Lyttelton and Infrastructure providers; and
 - 14.6 Numerous individuals who have requested specific changes to planning maps and / or lay submitters.
15. The issues of interest to each of these groups differ, but it is submitted that they could be subject to one wider mediation with a number of topics on the agenda.
16. Council and the Crown recognise that the Terms of Reference identifies the Natural Hazards Proposal as a 'secondary priority' matter and that the Hearings Panel needs to continue with hearings in order to get through its workload. It is also acutely aware of the importance of this chapter to Christchurch given the 2010/2011 earthquake sequence.
17. The Council also records that it intends to call an expert in support of the modelling that underpins the GNS modelling dealing with the instability areas on the Port Hills. He is based in the United Kingdom, but we understand that arrangements could possibly be made for him to link in by video-conference to caucusing, at short notice, if necessary, and is expected to be in New Zealand in late February/early March for two weeks.

Possible solution in terms of hearing dates

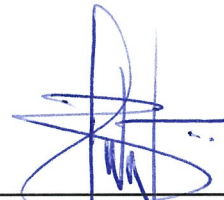
18. In order to ensure that the Hearings Panel can continue with its deliberations while these important pre-hearing processes take place on natural hazards, a solution may be for the Hearings Panel to hear and make decisions on one of the other secondary priority matters during the month of February 2015, such as the numerous designations included in Chapter 10.

19. This may enable a more effective and efficient hearing on the Natural Hazards Proposal could be heard shortly afterwards, such as in March 2015.
20. Council and the Crown respectfully seeks directions accordingly, consistent with the suggestions and requests identified in this memorandum. Counsel for both the Council and the Crown would be happy to attend a conference with the Hearings Panel (either in person or by telephone) to address any issues that arise, if that would be of assistance.

DATED this 8th day of December 2014



J G A Winchester/S J Scott
Counsel for Christchurch City Council



P Radich QC/C Carrenceja
Counsel for the Crown